

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-sixth Session
May 18, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 4:06 p.m. on Wednesday, May 18, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Chair
Senator Shirley A. Breeden, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator James A. Settelmeyer
Senator Elizabeth Halseth
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Fred Hillerby, State Board of Pharmacy
Alisa Nave, The Capitol Company; Nevada Justice Association
Marlene Lockard, Nevada Chiropractic Association
Mendy Elliott, Chiropractic Physicians' Board of Nevada
Cheryl Blomstrom, Nevada Dietetic Association

CHAIR SCHNEIDER:

I am opening the work session hearing on Assembly Bill (A.B.) 199 with a work session document ([Exhibit C](#)).

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[ASSEMBLY BILL 199 \(1st Reprint\)](#): Revises provisions governing the practice of pharmacy. (BDR 54-875)

CHAIR SCHNEIDER:

This is Assemblywoman Debbie Smith's bill, with proposed amendment 6904, [Exhibit C](#). There is also a proposed amendment No. 6905 ([Exhibit D](#)), which protects entities wanting to use the Rx symbol. In recent years, the State Board of Pharmacy (SBP) has taken action on companies using the Rx logo in their business logo or title. The first constituent call I received was from RX Realty. Their motto is "Your prescription to real estate health." This company was not trying to say they sold prescription drugs, but for the SBP to threaten to close them down because of this made no sense to me. We did send the SBP a letter, and they agreed to back away until this Session so we could try to get something in statute.

MATT NICHOLS (Counsel):

The Board [SBP] would still have the authority to deny approval of the use of the Rx logo in circumstances where the person seeking to use the logo should be licensed under [*Nevada Revised Statutes*] chapter 639 and did not have a license, or in any circumstance where it could lead to confusion or affect public safety.

FRED HILLERBY (State Board of Pharmacy):

I recall when this was an issue. The law was the law, and the SBP did not have much option but to tell these entities they could not use the Rx symbol. I am sure this will be fine with them.

CHAIR SCHNEIDER:

I also consulted with the sponsor of this bill about our amendment and she said she was fine with it.

SENATOR PARKS:

Was the proposed amendment 6904 at the request of the sponsor of the bill?

CHAIR SCHNEIDER:

Yes, it was. I will close the work session hearing on [A.B. 199](#).

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED
[A.B. 199](#).

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

I will open the work session hearing on A.B. 382, with a work session document ([Exhibit E](#)). This is regarding a preceptor program for chiropractors.

[ASSEMBLY BILL 382 \(1st Reprint\)](#): Requires the Chiropractic Physicians' Board of Nevada to establish a preceptor program. (BDR 54-1006)

CHAIR SCHNEIDER:

We do have a conceptual amendment, [Exhibit E](#), from Alisa Nave with The Capitol Company. If there are no questions or discussion, I will close the work session hearing on A.B. 382.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED A.B. 382.

SENATOR COPENING:

I want to clarify the stricken language about the malpractice insurance on page 2 of the amendment.

ALISA NAVE (The Capitol Company; Nevada Justice Association):

In section 4, subsection 3, paragraph (c) of our amendment, [Exhibit E](#), it specifies that students participating in the preceptor program would be covered by the preceptor's malpractice insurance. This is something the Chiropractic Physicians' Board of Nevada was planning on doing in the regulatory process. We felt it was important that it be required in statute. If someone went to a chiropractor and a student worked on that person and harm was done, this part of the bill would cover that injured person.

The second portion of the amendment applies to chiropractors licensed in other states who move to Nevada and begin going through the regulatory process. While they are involved in the process, they are allowed to practice under a licensed chiropractor and would be covered by the malpractice insurance of the overseeing chiropractor.

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I believe the stricken language on page 3 of the bill is from the amendment that came from the Assembly. That is the red font with the line through it.

MARLENE LOCKARD (Nevada Chiropractic Association):
That "manipulation" language and definition is currently in statute. That is why it was stricken. We view this as a friendly amendment.

MENDY ELLIOTT (Chiropractic Physicians' Board of Nevada):
We are fine with the amendment and happy with the bill.

SENATOR SETTELMAYER:
Has anyone talked to the sponsor of the bill about this?

MS. LOCKARD:
Yes, the sponsor is Assemblyman Scott Hammond. He has worked with us and has no objection to the amendment.

SENATOR SETTELMAYER:
Even if we did not pass the amendment right now, are you saying you would do it through *Nevada Administrative Code*?

MS. LOCKARD:
Yes.

SENATOR ROBERSON:
I can support the original bill but not the amendment since it can be done by regulation.

SENATOR COPENING:
Can you reiterate the importance of being covered by the malpractice insurance?

MS. NAVE:
What the malpractice coverage does is protect individuals who go to a chiropractor and receive treatment by a unlicensed practitioner who has not passed State exams and completed the licensing process.

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SENATOR COPENING:

If the students or unlicensed chiropractors are not covered by that professional's medical malpractice insurance, what happens? Would the injured party have any recourse?

MS. NAVE:

They would not have any automatic recourse.

MS. ELLIOT:

That is correct. What happens is the students come in to get on-the-job training from the preceptor chiropractor. We can either do this by regulation or place it in the bill. Either way, we have to get the students covered by the malpractice insurance so they can work with the preceptor. Otherwise, it would be a legal mess.

SENATOR COPENING SECONDED THE MOTION.

SENATOR PARKS:

Is the term preceptor used elsewhere in statute?

MS. LOCKARD:

The preceptor program is adopted and followed in at least 17 other states. It allows chiropractic students who have not graduated to work under a licensed chiropractor. The purpose of the bill was to allow more students to set up business in Nevada. We are surrounded by states that allow this.

MS. ELLIOT:

In the chiropractic world, "preceptor" is a common and acceptable term.

THE MOTION CARRIED. (SENATORS HALSETH, ROBERSON AND SETTELMAYER VOTED NO.)

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CHAIR SCHNEIDER:

Mr. Nichols, does A.B. 382 have a two-thirds majority vote requirement?

MR. NICHOLS:

"Yes, it does. There is a [\$35] fee in section 8."

MS. LOCKARD:

We would like to request the amendment be pulled from the bill.

MS. NAVE:

We want to put on the record that it was never our intent to complicate the law. It was our intent to streamline the licensure process for these students and for the practitioners who have not yet met the State requirements to practice chiropractic services in Nevada. We also wanted to make sure those who received the services of these individuals were provided a safe environment.

SENATOR ROBERSON:

I met someone in the chiropractic industry over the weekend who expressed some concern about this being in statute when it can easily be handled by regulation.

SENATOR BREEDEN:

Based on the information just presented to us, I will reluctantly rescind my motion to amend and do pass A.B. 382.

SENATOR BREEDEN MOVED TO RECONSIDER THE ACTION WHEREBY
A.B. 382 WAS AMENDED AND DO PASSED.

SECOND OPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

I will reopen the work session hearing on A.B. 382.

SENATOR SETTELMAYER MOVED TO DO PASS A.B. 382.

SECOND OPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

I will open the work session hearing on A.B. 289 with a work session document ([Exhibit F](#)).

ASSEMBLY BILL 289 (1st Reprint): Enacts provisions relating to the practice of dietetics. (BDR 54-871)

CHAIR SCHNEIDER:

We have four amendments on this bill. One is by Cheryl Blomstrom on behalf of the Nevada Dietetic Association, pages 3 and 4, [Exhibit F](#). The second proposed amendment 6830 is a mock-up from Assemblyman John C. Ellison, pages 6 through 8, [Exhibit F](#). The third amendment is from Jim Jenks, page 10. The fourth amendment is from the Natural Products Association Northwest, on page 12, [Exhibit F](#).

MR. NICHOLS:

The mock-up prepared for Assemblyman Ellison, in my view, addresses the concerns that are raised in the proposed amendments ... in more general language rather than a laundry list of the persons and activities that would not be considered the practice of dietetics. It's a more general and inclusive list. I don't know if it's my place, but I do recall that the sponsor of the bill indicated on the record at the hearing that she was only comfortable with the amendment submitted by Ms. Blomstrom. I don't know if Mr. [Assemblyman] Ellison's amendment has been presented to her, and I don't know that that matters, but I just thought I would offer.

CHAIR SCHNEIDER:

If we were to adopt amendments one and two, would everything else be covered?

MR. NICHOLS:

Mr. Chairman, it is my opinion that the [second] amendment ... would encompass the concerns addressed in the [two other] proposed amendments I do not believe you could adopt [the last three] all together. It would be a mess.

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CHERYL BLOMSTROM (Nevada Dietetic Association):

I have another conceptual idea. The Governor's office has a concern with the formation of a new board. I have been looking for another home for the licensing of dietitians in the State. Chris Roller, who is chair of the Advisory Council on the State Program for Fitness and Wellness (FWC), Health Division, Department of Health and Human Services, proposed a solution this afternoon. He suggested that through the FWC, which is currently authorized to create subcommittees, we could form a subcommittee for the purpose of licensing dietitians. The subcommittee would be composed of registered dietitians in Nevada. I had a brief conversation with Michael J. Willden, Director, Department of Health and Human Services, about this and we will be meeting tomorrow. If you like, I can continue to flesh this out and bring it to you as a Senate Floor amendment, in addition to these two amendments you selected. As Mr. Nichols noted, Assemblyman Ellison's amendment was presented to Assemblywoman April Mastroluca, the bill's sponsor, and she was not in favor of it. Clearly, this is a policy choice for the Committee.

CHAIR SCHNEIDER:

I would rather not do a floor amendment; can we do this on Friday?

MS. BLOMSTROM:

Okay.

CHAIR SCHNEIDER:

I would need it by tomorrow so we could have a written amendment to look at on Friday.

MS. BLOMSTROM:

I have had several conversations with Governor's staff and I think this may be something they would be willing to review. It may solve everyone's concerns.

SENATOR COPENING:

Why is Assemblywoman Mastroluca not in favor of that amendment? Also, we have received many e-mails from concerned people about this bill. As I understand it, they may have been responding to things that were not in the bill. Can you clarify how this bill will not affect these people?

MS. BLOMSTROM:

Regarding Assemblywoman Mastroluca, she received the amendment late on the day we had the first hearing, and she did not have much time to look at it. It is her belief, and she discussed this with Assemblyman Ellison, that what he is prescribing in his amendment is essentially the same thing that is in the original language of the bill. She thinks that it is redundant.

Regarding the e-mails, I believe a great deal of that is based on misinformation. This is meant to license registered dieticians in Nevada to provide medical nutrition therapy; the folks who are working in hospitals. When you go to your doctor and he prescribes a medication for you, you take it to your pharmacy and fill it. This is kind of the same thing except they are prescribing food and nutrition. The dietician, working hand in hand with the physician, is filling the prescription. This does not affect the supplement business. This does not affect the herb business. This does not affect people who offer nutrition information. Those people who are exempt and who will not be damaged by this at all appear to be the ones who are vocally active.

CHAIR SCHNEIDER:

You have until tomorrow, and I definitely want to process this bill. I know Assemblywoman Mastroluca has worked hard on this bill and I do not want it to go to the Governor's desk and possibly fail there. Then the Legislators next Session will not have to go through the massive amount of opposition phone calls and e-mails ([Exhibit G](#)) that we received.

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I will close the work session hearing on A.B. 289 and adjourn the meeting of the Senate Committee on Commerce, Labor and Energy at 4:43 p.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance List
A.B. 199	C	Senator Michael A. Schneider	Work Session Document
A.B. 199	D	Senator Michael A. Schneider	Proposed Amendment 6905
A.B. 382	E	Senator Michael A. Schneider	Work Session Document
A.B. 289	F	Senator Michael A. Schneider	Work Session Document
A.B. 289	G	Senator Michael A. Schneider	Letters and e-mails of opposition